



Materials for
MULTICULTURALISM

SPRING 1999

VOLUME 1

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Faculty of Law
University of Toronto

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FACULTY OF LAW
UNIVERSITY OF TORONTO

MULTICULTURALISM (382S)

Professor Ayelet Shachar

Three Credits; Spring 1999

Class: Wednesdays 2:10 – 4:00; Falconer Hall, Room FA1

Office Hours: Thursday 11:00-1:00

Office: TBA; Room: TBA; Phone: TBA.

How should we think about the rights of minority groups in diverse societies?

This course looks to political theory and legal practice in an attempt to identify morally defensible and politically viable answers to this question. Attention will focus upon the contemporary legal understanding of multiculturalism as it refers to a wide range of state attempts to facilitate minority groups' practices and norms, for example, by exempting group members from certain laws or by offering minority groups some degree of self-governance. The course consists of three parts. The first part explores the philosophical foundations of multiculturalism as a theory of differentiated citizenship. The second part examines the legal and institutional "separation of powers" aspect of multiculturalism. Consideration will be given to the following issues: which groups deserve differentiated treatment, who has authority to speak for a cultural minority, which court(s) should have jurisdiction over conflicts between a group member and her own identity group, which forum should resolve tensions between state law and group-based tradition when they represent conflicting norms. The third and final part of the course evaluates the potentially negative effect of well-meaning accommodation policies in the fields of public education, family law, and criminal law. Taken together, the three parts of the course address current debates about the most suitable institutional structures and substantive standards for creating, sustaining and rearranging the relationships among minority groups, the state, and individual rights.

Evaluation:

- Class participation (15%): Class meetings will be organized around a discussion of a given week's readings. Class participation includes attendance, substantive participation in weekly discussions, and one in-class presentation of a comment paper (see below).
- Two five-page comment papers (30%): The comment papers will be critical assessments of one or more of the sources on the reading list. comment papers are due at 4 p.m. on the day before the readings is scheduled to be discussed. Each student is expected to use the five-page comment paper to illuminate an important question in the reading or to develop their own coherent argument based on the readings. The submission of at least one comment paper will be accompanied by a short in-class presentation of the paper. Students must sign up for the oral presentation of one of their comment papers ahead of time, during the second meeting of the seminar.
- A final (approx. 20-25 page) research paper (55%): The final paper's topic must be pre-approved by the instructor. A one-page outline of your paper must be turned by 4 p.m., Wednesday, February 24. The final paper is due by 10 a.m., Friday, April 30.

Required Texts:

Reading material will draw on leading American and Canadian legal cases, and on political theory literature. Most of the reading materials are included in a Course Packet available for purchase at the University of Toronto Faculty of Law Bookstore – hereinafter CP.

Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995)

Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990)

These books are available for purchase at the University of Toronto Faculty of Law bookstore.

(*) Indicates supplemental reading items.

I. FOUNDATIONS

Week One (January 6): Introduction

Objectives and design of the course;
Course requirements.

Week Two (January 13): Power and Group Identity

Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), chaps. 1, 2, 4, 6.

Charles Taylor, “The Politics of Recognition” in *Multiculturalism: Examining the Politics of Recognition*, Amy Gutmann ed. (Princeton: Princeton University Press, 1994) – CP.

Week Three (January 20): Multicultural Citizenship

Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995).

Vernon Van Dyke, “The Individual, the State, and Ethnic Communities in Political Theory” in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press, 1995) – CP.

Week Four (January 27): Beyond Liberal Pluralism?

Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990) – CP.

Church of the Lukumi Babau Aye v. City of Hialeah, 508 U.S. 520 (1993) – CP.

The Religious Freedom Restoration Act of 1993 (RFRA) – CP.

Robert Cover, “The Origins of Judicial Activism in the Protection of Minorities” in *Narrative, Violence, and the Law*, Martha Minow et al. eds., (Ann Arbor: The University of Michigan Press, 1995) – CP. (13-33)

William A. Galson, Vol. 105 *Ethics* “Two Concepts of Liberalism” 516 (1995) – CP.

Michael Walzer, “Pluralism: A Political Perspective” in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press, 1995) – CP.

(*) Jeff Spinner, *The Boundaries of Citizenship* (Baltimore: The John Hopkins University Press, 1994), chaps. 1, 3, 4, 5, 8.

Week Five (February 3): Group Accommodation and Women’s Rights

Ayelet Shachar, “Group Identity and Women’s Rights in Family Law: The Perils of Multicultural Accommodation” Vol. 6 *Journal of Political Philosophy* 285 (1998) – CP.

Eveline Goodman-Thau, “Challenging the Roots of Religious Patriarchy and Shaping Identities and Community” in *Calling the Equality Bluff*, Barbara Swirski and Marilyn P. Safir eds. (New York: Athene series, Teachers College Press, 1993) – CP.

Marie-Aimee Helie-Lucas, “The Preferential Symbol for Islamic Identity: Women in Muslim Personal Laws” in *Identity Politics & Women*, Valentine M. Moghadam ed. (Boulder: Westview Press, 1994) – CP.

(*) Susan Moller Okin, “Feminism and Multiculturalism: Some Tensions” Vol. 108 *Ethics* 661 (1998).

II. APPLICATIONS

Week Six (February 10): Family Matters I (Marriage)

Reynolds v. United States, 98 U.S. 145 (1878) – CP.

Loving v. Virginia, 338 U.S. 1 (1967) – CP.

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) – CP.

Martha Minow, “All in the Family & In All Families: Membership, Loving, and Owing” Vol. 95 *West Virginia Law Review* 275 (1992-1993) – CP.

(*) Carol M. Rose, “Women and Property: Gaining and Losing Ground” Vol. 78 *Virginia Law Review* 421 (1992).

Week Seven (February 17): Reading Period

A one-page outline of your final paper and preliminary bibliography is due by 4:00 p.m., Wednesday, February 24.

Week Eight (February 24): Family Matters II (Adoption; Custody)

Mississippi Band of Choctaw Indians v. Holyfield, 490 US 30 (1989) – CP.

Toni Hahn Davis, “The Existing Indian Family Law Exception to the Indian Child Welfare Act” Vol. 69 *North Dakota Law Review* 465 (1993) – CP.

Twila L. Perry, “Transracial and International Adoption: Mothers, Hierarchy, Race and Feminist Legal Theory” Vol. 10 *Yale Journal of Law and Feminism* 101 (1998) – CP.
(pp.

(*) Elizabeth Bartholet, “Where Do Black Children Belong?” Vol. 139 *University of Pennsylvania law Review* 1163 (1991).

Week Nine (March 3): Child-Parent-Community-State (Education; Medical Decisions)

Education

Wisconsin v. Yoder, 406 U.S. 205 (1972) – CP.

Board of Education of Kiryas Joel Village School District v. Grumet, 114 S.Ct. 2481 (1994) – CP.

Richard J. Arneson and Ian Shapiro, “Democratic Autonomy and Religious Freedom: A Critique of *Wisconsin v. Yoder*” in *Political Order*, Ian Shapiro and Russel Hardin (New York: New York University Press, 1996) – CP.

Martha Minow, *Not Only for Myself* (New York: The New Press, 1997), chap. 5 – CP.

Medical Decisions

B(R) v. Children's Aid Society of Metropolitan Toronto [1995] S.C.R. 315 – CP.

Re J. (An Infant): B and B v. Director General of Social Welfare [1996] 2 N.Z.L.R. 134.

Joseph Goldstein, “Medical Care for the Child at Risk: On State Supervention of Parental Autonomy” Vol. 86 *Yale Law Journal* 645 (1977) – CP.

Week Ten (March 9) Language Rights (Canada; U.S.)

Denise Réaume and Leslie Green, “Education and Linguistic Security in the Charter” Vol. 34 *McGill Law Journal* 777 (1989) – CP.

James Crawford ed., *Language Loyalties* (Chicago: The University of Chicago Press, 1992) pp. 36-71, 101-111, 243-251, 351-354 – CP.

Francois Vaillancourt, “An Economic Perspective on Language and Public Policy in Canada and the United States” in *Immigration, Language, and Ethnicity*, Barry R. Chiswick ed. (Washington DC: AEI Press, 1992) – on reserve.

(*) *Ford v. AG Quebec* [1988] 2 S.C.R. 712; *Mahe v. Alberta* [1990] 1 S.C.R. 342.

(*) Joseph H. Carens, “Immigration, Political Community, and the Transformation of Identity: Quebec’s Immigration Policy in Critical Perspective” in *Is Quebec Nationalism Just?* Joseph H. Carens ed. (Montreal & Kingston: McGill-Queen’s University Press, 1995).

Week Eleven (March 16): Self-Government Rights (Indigenous Peoples)

Patrick Macklem, “Normative Dimensions of the Right of Aboriginal Self-Government” in *Aboriginal Self-Government Legal and Constitutional Issues* (Ottawa: Minister of Supply and Services Canada, 1995) – CP.

Canada, Royal Commission on Aboriginal Peoples, *Report*, Vol. 4 *Perspectives and Realities* (Ottawa: Queen’s Printer, 1996), pp. 28-53 – CP.

(*) John Borrows, “Contemporary Traditional Equality: The Effects of the Charter on First Nations Politics” in *Charting the Consequences*, David Schneiderman & Kate Sutherland eds. (Toronto: University of Toronto Press, 1997).

(*) Aboriginal title: Canada: s. 35 (1) of the *Constitution Act, 1982*; *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010; Australia: *Mabo v. Queensland* (1992) 175 C.L.R. 1, *The Wik Peoples v. Queensland* (1996) 187 C.L.R. 1.

Week Twelve (March 24): Special Representation Rights

Miller v. Johnson, 115 S.Ct. 2475 (1995).

Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995), chaps.1, 5 – CP.

Will Kymlicka, *Finding Our Way* (Toronto: Oxford University Press, 1998), chap. 7 – CP.

Donald L. Horowitz, “Constitutional Design: An Oxymoron?” Paper presented at the annual meeting of the American Society for Political and Legal Philosophy, San Francisco, Jan. 5-6, 1998 – CP.

(*) Richard H. McAdams, “Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination” Vol. 108 *Harvard Law Review* 1005 (1995).

III. THE MULTICULTURAL CITIZENSHIP MODEL REVISITED

Week Thirteen (March 31): Do We Need Cultural Rights After All?

Chandran Kukathas, “Liberalism and Multiculturalism: The Politics of Indifference” Vol. 26 *Political Theory* 686 (1998) – CP.

Bhikhu Parekh, “Cultural Pluralism and the Limits of Diversity” Vol. 20 *Alternatives* 431 (1995) – CP.

(*) Geoffrey Brahm Levey, “Equality, Autonomy, and Cultural Rights” Vol. 25 *Political Theory* 215 (1997).

(*) Jacob T. Levy, “Classifying Cultural Rights” in *Ethnicity and Group Rights*, Ian Shapiro and Will Kymlicka eds. (New York: New York University Press, 1997).

Week Fourteen (April 7): Summation and Reflections

Uma Narayan, *Dislocating Culture* (New York: Routledge, 1997), pp. 1-40 – CP.

Salman Rushdie, “Good Advice is Rarer Than Rubies” in *East, West: Stories* (New York: Vintage International, 1994) – CP.